

Cole Schotz P.C.

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Member

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April 19, 2017

Via E-mail fajardo.juan@epa.gov and Regular Mail

Juan Fajardo, Esq.
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New Jersey Superfund Branch
US Environmental Protection Agency, Region 2
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APR 24 2017
RECEIVED

Re: Offer of Cash Out Settlement at the Diamond Alkali Superfund Site
Lower 8.3 Miles of Lower Passaic River; Essex and Hudson Counties, NJ -
DiLorenzo Properties Company, et al.

Dear Mr. Fajardo:

Thank you for taking the time last week to discuss the Cash Out Settlement Offer with me. At the conclusion of our conversation you asked me to put the concerns and requests of my client in writing for consideration by the EPA. Please accept this letter as the written request for certain clarifications in the Administrative Settlement Agreement.

Please also accept this letter as written advice that our client would like to enter into the Administrative Settlement Agreement ("Agreement") in a form substantially similar to the draft enclosed with the March 30, 2017 letter from the EPA, subject to resolution of these clarifications. Hopefully we can resolve these issues before April 21, 2017. I believe you indicated in our call that if we are continuing to discuss these issues, the EPA will keep the settlement offer open for a while longer.

We have two concerns which we would like to address with you.

First, we want to clarify and properly designate the Settling Party listed as DiLorenzo Properties Company on Appendix A to the Settlement. As the December 15, 2016 letter from my partner David Kohane to Sarah Flanagan indicated, the designation on the EPA's file is "Goldman/DiLorenzo Related Companies" and has also been referred to as "DiLorenzo Properties Company on behalf of itself and the Goldman/Goldman/ DiLorenzo Partnership". Mr. Kohane's letter request for a settlement was made on behalf of these entities and their affiliates. The designation on Appendix A should be as follows:

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Juan Fajardo, Esq.

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“DiLorenzo Properties Company, a limited partnership, together with its partners, and the Estates of Sol Goldman, Irving Goldman, Alex DiLorenzo, Jr. and Alex DiLorenzo III, including the executors and beneficiaries of said estates, and Goldlex Holding Company and GHC in Liquidation, common law partnerships between the Estate of Sol Goldman, Irving Goldman and DiLorenzo Properties Company, as well as any officers, directors, partners, executors, administrators, representatives, beneficiaries or successors of any of the foregoing (collectively, “the DPC Settling Parties”).”

As we discussed on Thursday our second request is the reservation of rights by the DPC Settling Parties against its tenant, Palin Enterprises. Palin Enterprises, another Settling Party, was the tenant at the facility covered by the settlement pursuant to a triple net 50-year master lease dated September 1959. Palin Enterprises has indemnifications obligations to the DPC Settling Parties. We want to preserve these rights and Palin’s obligations. Accordingly, we propose adding the following language to paragraphs 37 and 39 of the proposed Agreement:

“37. This waiver excludes any claims by and between the DPC Settling Parties as well as claims for indemnification by the DPC Settling Parties against Palin Enterprises and its affiliates and related entities and individuals.”

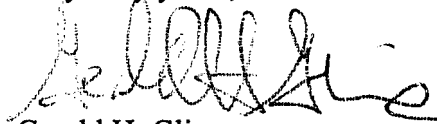
At the end of the first sentence of Paragraph 39 we would propose adding the following:

“but subject to and limited by the exclusions in paragraph 37”.

Based upon our conversation last Thursday, it’s my understanding that the EPA wants to incorporate the settlement into one Agreement. If however there are going to be separate agreements, these changes will have to be made to both the Palin and DPC agreements.

Please let me know whether the EPA agrees with these changes. I am happy to discuss this with you at your convenience.

Very truly yours,



Gerald H. Gline

GHG:bef